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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	IB Docket No. 95-59
Preemption of Local Zoning)	DA 91-577
Regulation of Satellite)	45-DSS-MISC-93
Earth Stations)	

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COMMENTS OF DIRECTV

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I. DIRECTV AND DBS SERVICE

Last month, on June 17, 1995, DIRECTV celebrated the one-year anniversary of its rollout as the first direct broadcast satellite ("DBS") service in the United States.^{1/} Utilizing two high-powered DBS satellites positioned at the 101° W.L. orbital position,^{2/} DIRECTV provides an innovative, state-of-the-art video and audio programming delivery service using digital compression technology. DIRECTV delivers approximately 175 channels of entertainment and informational programming directly to homes and businesses equipped with DIRECTV's DSS® receiving system, which features satellite dish antennas just 18 inches in diameter that are mass marketed on a national basis and easily installed. At present, DIRECTV serves in excess of 600,000 subscribers throughout the United States, with hundreds of new customers subscribing each day.

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1. DIRECTV is a wholly-owned indirect subsidiary of General Motors Corporation ("GM") and a licensee in the DBS service. Another DBS provider, United States Satellite Broadcasting, Inc., provides high-power DBS service using a five-transponder payload on DBS-1, DIRECTV's first DBS satellite, and initiated service at approximately the same time as DIRECTV. Hughes Network Systems, Inc. and Hughes Communications Galaxy, Inc., both filing comments today, are affiliates of DIRECTV and indirect subsidiaries of GM. DIRECTV supports those comments.
 2. On June 9, 1995, DIRECTV launched DBS-3, which will also be positioned at 101°, and which will provide a platform to continue DIRECTV's delivery of new programming to consumers, while also functioning as an in-orbit spare to DBS-2 to ensure reliable service.

In its recent inquiry into the status of competition in the market for the delivery of video programming, the Commission recognized that "local zoning and other regulations may potentially serve as an impediment to the development and expansion of DBS service."^{3/} The Commission should take all necessary steps to ensure that this potential impediment is not realized. As the present *Notice* recognizes, the emergence of new services like DIRECTV demonstrates the competitive nature of satellite services and the increasingly important role that satellite technology will play in our national information infrastructure.^{4/} This can only be the case, however, if the Commission acts to protect and promote the development of such services -- including the assurance that their development will not be needlessly hamstrung by inconsistent and often irrational state and local zoning regulations.

DIRECTV's high-power DBS antennas provide prime examples of the need for strict preemption rules in the direct-to-home satellite area. Although municipal ordinances rarely distinguish among different types of satellite antennas, it is difficult to imagine antennas more unobtrusive than DIRECTV's, which are no larger in diameter than a pizza. Moreover, DIRECTV's antennas are receive-only and intended primarily for residential use. There is no more unworthy candidate for subjection to local zoning regulations, especially in light of the economic and public interest harm that such regulations would engender in this context.

3. In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Notice of Inquiry*, CS Docket No. 95-61 (released May 24, 1995), at ¶ 42 (footnote omitted).

4. *Notice* at ¶ 29.

After more than a decade, DBS is only now emerging as a promising competitive video distribution alternative to cable television. Subjecting DBS operators to a patchwork of local zoning ordinances could radically affect the seamlessness of DIRECTV's national service, and has the potential to cripple the continued emergence of DBS as the best method of removing the Commission from the business of regulating cable rates. This result is not in the public interest.

II. THE RULE MUST PROTECT SMALL SATELLITE ANTENNA USERS

DIRECTV supports the comments submitted today by its affiliate Hughes Network Systems, and would like to emphasize that it is of vital importance that regulations that place a "substantial" burden on small satellite antennas be preempted per se. If the Commission does adhere to its proposal to declare all regulation of small satellite antennas^{5/} presumptively preempted, it must ensure that the presumption and rebuttal system is clear enough to allow consumers to access DIRECTV with the same ease as cable television.

A. Any Regulation That Burdens the Installation of Satellite Antennas Must be Subject to Preemption

DBS can compete with cable television only if antenna installation is quick, inexpensive, and hassle-free; burdensome regulations will substantially increase the cost and reduce the attractiveness and feasibility of DBS. Given this potential impact upon competition, the Commission must be able to examine any local regulation that places more than a *de minimis* burden on the use of satellite antennas.

5. Small satellite antennas are those antennas one meter or less in diameter, or two meters or less and located in commercial or industrial areas, as more precisely identified in the proposed rule at 25.104(b). See *Notice of Proposed Rulemaking* ("Notice") at ¶ 46.

DIRECTV's high-power DBS antennas are mass-marketed and sold to consumers at retail electronics outlets. DBS subscribers purchase their systems at the same stores and in the same manner in which they buy a television, stereo or VCR, and expect that they can buy a DBS receiver and antenna and hook it up the same day. Consumers' enthusiasm for DBS will be significantly chilled if the service is accompanied by the need to seek out permits or other authorizations from a local jurisdiction.^{6/}

Under the proposed rule, the Commission will examine for preemption only those regulations that impose "substantial costs" on satellite antennas or "substantially" limit reception by such antennas.^{7/} The Commission has taken pains to indicate which burdens are too high, stating that this threshold is "rather low" and that it will examine any regulation that imposes burdens that are "not insignificant."^{8/} Nevertheless, the rule still fails to provide the kind of clarity that will enable a DBS subscriber or his installer to demonstrate to local officials that a regulation is presumptively preempted -- experience shows that local officials will inevitably interpret "substantial" as a rather high, not low, threshold.

In the arena of consumer services, even a burden that is "rather low" will have a serious adverse impact upon competition between DBS and cable. Forcing the consumer to stop by Town Hall to fill out a permit application to pay a fee to the municipality will destroy the perception of DBS as an off-the-shelf consumer item. DIRECTV therefore proposes that as to antennas for consumer use, the Commission define "substantial" to

6. Consumers, who associate DBS with other off-the-shelf consumer electronics items, will not be cognizant of local restrictions on satellite antennas, and thus will unknowingly violate any local regulation that may require a permit or procedure. In these cases, the entanglement with local processes will be even more burdensome.

7. See Notice at ¶ 46 (proposed Rule 25.104(a)).

8. See Notice at ¶ 58.

include imposition of any costs or fees, being required to obtain any permit or other authorization, or being required to attend a hearing or meeting of any kind.^{9/}

B. Small Satellite Regulations Must Be Preempted Per Se

In order to allow DBS to compete effectively against other communications services, users must be able to install, operate and maintain their DBS antennas without substantial interference or delay from local authorities. Only a *per se* ban on "substantial" regulation of small satellite antennas can ensure that consumers will have this freedom. Any other rule will provide local officials with the opportunity to justify and enforce burdensome regulations, leaving consumers with the choice of challenging or complying, neither of which is an attractive option.

The Commission, however, has proposed a system of presumptions and rebuttals. It is inappropriate for a consumer who has installed a DBS antenna to be faced with the prospect of facing a challenge at the FCC from the local jurisdiction. Even if he or she ultimately prevails, the thought that the consumer may have to fight City Hall all the way to Washington in order to enjoy DBS as an alternative to cable will seriously hamper the standing of DBS as a true user-friendly consumer electronics product.

If, however, the Commission does adopt its presumption and rebuttal scheme, the presumption must leave no room for doubt that local authorities will be required to come to the Commission to justify such an ordinance before attempting to enforce it against the

9. Substantial should be defined in the following language:

If the antenna is for consumer use:

1. imposition of any costs or fees;
2. being required to obtain any permit or other authorization; or
3. being required to attend a hearing or meeting of any kind.

user. If this system is adopted, DIRECTV encourages the Commission to follow the suggestion of Hughes Network Systems that Proposed Paragraph (c) be revised to state that ordinances affecting small satellite antennas are preempted until the issuing jurisdiction has demonstrated to the Commission that it has met its rebuttal burden. The Commission must also adhere to its plan to ban aesthetic regulation of small satellite antennas. While such regulations, if reasonable, may have their place for large antennas, the Commission has recognized that two meter antennas have a "diminished aesthetic impact."^{10/} DBS antennas have virtually *no* aesthetic impact. DIRECTV wholeheartedly supports the Commission proposal to preempt all local aesthetic regulation of smaller satellite antennas.

III. THE COMMISSION MUST SOON ADDRESS PRIVATE RESTRICTIONS

While the current rulemaking is limited to preemption of restrictive regulations enacted by local and state governments,^{11/} restrictions on satellite antennas contained in deed covenants and homeowners' association rules also pose a serious threat to the competitiveness of DBS. Indeed, the Commission has already received many complaints of such undue interference,^{12/} and DIRECTV has encountered several restrictive homeowner's agreements.

Given the seriousness of this issue, DIRECTV urges the Commission to initiate promptly a new proceeding to deal with the problem of private restrictions on small satellite antennas. The Commission should begin now to develop the record needed to determine the scope of the problem and to explore the kinds of solutions available to ensure

10. See Notice at ¶ 64.

11. See Notice at n. 14.

12. *Id.*

that consumers are able to enjoy the benefits of low-cost satellite information and communications services. The need for expedition in resolving this issue will rapidly become more pressing as the quick rollout of DBS and other satellite-based services continues. It would be ironic indeed if, after the Commission preempted unreasonable *governmental* regulations, the best hope for potential competition to cable television was thwarted by *private* restrictions.

Dated: July 14, 1995

Respectfully submitted,

DIRECTV

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CERTIFICATE OF SERVICE

I certify that I have this 14th day of July, 1995 delivered by hand the foregoing Comments of DIRECTV for preemption of local zoning regulation of satellite earth stations in IB Docket No. 95-59 to the following:

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